UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

AMERITECH

Employer

and

LOCAL UNION NO. 21, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO

Petitioner

Case 13-UC-343

DECISION AND ORDER

Upon a petition duly filed under Section 9(*b*) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 10(*b*) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record[1] in this proceeding, the undersigned finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[2]

2. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.[3]

3. The Employer and the Petitioner are parties to a collective-bargaining agreement in effect from June 28, 1998 through June 28, 2003. The Petitioner represents employees in numerous job classifications as set forth in the title summaries listed in the appendices of the agreement. On June 11, 1999, the Petitioner filed its petition for unit clarification in this proceeding. It seeks to add the position of CPE (Customer Premise Equipment) Collectors (also known as CPE Consultants) to the unit.

Facts

The Petitioner seeks to add the classification of CPE collector to the existing unit. The CPE collector position is not new and has always been excluded from the bargaining unit. The Union argues that it is appropriate to accrete the CPE collectors to the bargaining unit at this point because about March 1999, the CPE collectors began to work in the same Chicago Heights, Illinois, building with unit employees who also perform collections work. The CPE collectors had previously been housed in the Employer's Westchester, Illinois facility.

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1 The arguments advanced by the parties at the hearing and in their briefs have been carefully considered.

2 The Employer provides telecommunications products and services in a five-state area. Its gross annual revenues exceed $1 million and its annual revenues received across state lines exceed $50,000.

3 In September 1998, the Petitioner was formed by the merger of Locals 165, 188, 336, 383, 399, International Brotherhood of Electrical Workers, AFL-CIO, the constituent members of Council T-4, IBEW.

The CPE collectors, as the name implies, try to collect on bills for the CPE (Customer Premise Equipment) side of the Employer's operations. Their duties did not change with the move to the facility in Chicago Heights. Two main unit classifications discussed at the hearing are Customer Account Specialist (CAS) and Customer Advocate (CA). The CASs deal almost exclusively with collections for the network side of the Employer's operations.[4] Within the CAS category, different groups exist to handle various functions such as, *inter alia*, incoming calls, outgoing calls, dealing with bankrupt customers or customers whose service has been disconnected. The CAs do deal with CPE, rather than network-based, products and services. The CAs do not perform collection work, but instead serve as the initial point of contact for customers ordering equipment and handle customer issues.

The network collections are driven largely by the computer system and a series of systematic letters, denial notices and cutting off of service. On the CPE side, the collectors have a portfolio of accounts and are responsible for self-management and do not have the leverage of discontinuing service. As such, the CPE collectors require much more training: 6 months of "ramp-up" time compared with 4 to 5 weeks for CASs.

The hiring process for unit versus non-unit employees differs. For unit positions, the non-management staffing center processes the job requisition and the staffing center posts the positions on Joblink. Employees then bid on the job, take any applicable tests, and do a site visit rather than an interview. For non-unit positions, the management staffing center posts open positions in the management version of Joblink and the staffing representatives screen applicants and conduct interviews.

The petitioned-for employees and unit employees' direct supervision comes from separate area managers although second and third level supervisors oversee the CPE collectors and unit employees. The terms and conditions of employment for the unit and petitioned-for employees also differ to a large extent. The unit employees have various hours scheduled with breaks, lunches and overtime. The CPE collectors work different hours and not all hours are scheduled. They do receive overtime. The CPE collectors complete time sheets whereas most unit employees must log in and out of the timekeeping system. The CPE collectors must adhere to the Employer's dress code of "business casual" whereas the unit employees have no dress code. The computer systems used by the petitioned-for employees and the unit employees are separate. The unit employees receive formal monthly evaluations based on objective criteria. The CPE collectors receive annual evaluations based on meeting certain goals.

The benefits for the two groups also diverge. The CPE collectors earn a salary based on their grade level and merit. Both groups are eligible for bonuses but the programs are different. The wage schedules for the unit employees are set forth in the collective-bargaining agreement and their raises are step increases rather than merit-based. The pension plans and 401k plans also differ. The vacation preferencing systems, excused days and floating holidays are separate. The employees do have access to the same health programs.

There is little evidence in the record of meaningful interchange. While the petitioned-for and unit employees work in the same building and use the same break room and cafeteria, they do not work together or even in the same area. The CPE collectors may contact CAs regarding bill disputes and may exchange faxes, but this is not true interchange in the sense of working together or covering for one another. The record does show that 3 of 18 CPE collectors were former CASs. Nonetheless, these employees, like external candidates, underwent the normal hiring process including an interview. They also acquired additional training.

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[4] The record reflects that some unit employees may collect on smaller CPE-related items if they are part of the customer's network bill, but the record shows that such revenue constitutes less than 2% of the network side revenue.

Analysis

As a threshold issue, the petition in the instant case is untimely. The Board refuses to clarify a unit in the middle of a contract term when the objective is to change the composition of a contractually agreed-upon unit by the exclusion or inclusion of employees. The Board has found that to grant the petition at such a time would be disruptive of the parties' bargaining relationship. *Edison Sault Electric Co.*, 313 NLRB 753 (1994); *Arthur C. Logan Memorial Hospital*, 231 NLRB 778 (1977). A unit, however, may be clarified midterm where employees are performing a new operation or to determine supervisory status of certain classifications. See e.g. *Crown Cork and Seal Co.*, 203 NLRB 171 (1973); *Western Colorado Power Co.*, 190 NLRB 564 (1971). The Board will also entertain UC petitions shortly after a contract is executed where the parties could not reach agreement on the disputed classification and the petitioner did not exchange its position on the classification for concessions in negotiations. *St. Francis Hospital*, 282 NLRB 950 (1987). Another exception is where recent substantial changes have taken place. See *Rock-Tenn Co.*, 274 NLRB 772 (1985); compare *Batesville Casket Co.*, 283 NLRB 795 (1987).

In the instant case, the collective-bargaining agreement term runs from June 28, 1998 through June 28, 2003. The petition was filed June 11, 1999.[5] As such, it would appear that the midterm filing is inappropriate. The Petitioner, however, contends that the move of the CPE collectors to the Chicago Heights building is a significant change. I find, however, that the mere change of location is not a substantial change of the type that warrants clarification of the unit. It is clear from the record that the CPE collectors' duties have not changed with their move. The Union further argues that it believed that non-unit employees were to be included in the unit if they became "co-located" with unit employees. The Breakthrough Agreement upon which this understanding was purportedly based, however, states that non-unit employees would be included in the unit if their duties or responsibilities changed such that they came within the purview of the collective-bargaining agreement. As stated above, the move to the Chicago Heights facility did not involve a change in duties or responsibilities. As such the mere "co-location" of unit and non-unit employees is an insufficient basis for accretion.

Next, accretion is simply not appropriate in this case. Accretion effectively denies the accreted employees the opportunity to choose representation. Accordingly, the Board strictly limits the circumstances in which accretion will be permitted. The employees sought to be accreted must have an overwhelming community of interest such that they have lost their separate identity and do not constitute a separate unit. *Gitano Group, Inc.*, 308 NLRB 1172, 1174 (1992); *Super Valu Stores*, 283 NLRB 134, 136 (1987); *Melbet Jewelry Co.*, 180 NLRB 107, 109-110 (1969). The Board examines a number of factors in arriving at a determination of the appropriateness of accretion including: the degree of operational integration between the additional employees and the preexisting unit, including such facts as employee interchange and contact among the employees of the two groups; similarities in the skills, functions, interests and working conditions of the employees; their bargaining history; and the degree of common supervision and control. *Super Valu Stores*, supra, at 136-137. The Board has noted that employees' interchange as well as common day-to-day supervision is especially important in a finding of accretion. *Gitano*, supra.

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[5] In early May 1998, advertisements for CPE collector positions solicited applications which were to be sent to Chicago Heights although, at the time, the CPE collectors were still operating from the Westchester facility. The Employer and Union discussed these non-unit positions around the time of the advertisements. Thus it appears that the Union had knowledge of the non-unit CPE collectors' existence prior to the time negotiations for the current collective-bargaining agreement concluded in early June 1998 although apparently the issue was not raised in negotiations.

The record shows no meaningful interchange or common direct supervision among the unit and petitioned-for employees. The petitioned-for employees may be in contact with certain unit employees for questions on customer accounts. This contact is not significant interchange involving working together or substituting for one another. Further the unit employees whom the Union claims transferred to CPE collectors underwent the normal hiring process including interviewing and additional training. Also as noted, the direct supervision of these groups of employees is separate.

Moreover, there is little functional integration between the petitioned-for employees and the unit employees. It is true that both groups perform collections work. Yet, the record shows that they operate separately based on the differences between the network and CPE side of the Employer's operations. They use different computer systems and the CPE collectors' functions are more complex and require greater training and skill.

Importantly, no bargaining history for the petitioned-for employees exists. Indeed, despite its apparent pre-existing knowledge of the CPE collector position, the Petitioner did not seek to add them to the unit until their move to Chicago Heights. The change of location is insufficient to overcome the history of exclusion from the unit or to strip the petitioned-for employees of their opportunity to choose representation.

In sum, I find that the petitioned-for employees should not be accreted to the preexisting unit because the petition was filed during the term of the collective-bargaining agreement and no overwhelming community of interest exists between the petitioned-for employees and the unit employees.[6]

ORDER

IT IS HEREBY ORDERED that the petition in the above matter be dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570.** This request must be received by the Board in Washington by **October 12, 1999**.

DATED September 27, 1999 at Chicago, Illinois.

/s/ Harvey Roth
Acting Regional Director, Region 13

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6 The Employer further argued that the petition should be dismissed because the Union's claim essentially involves a work assignment dispute. While it is true that the Union's grievance regarding this issue does seek to have the CPE collections work performed by unit employees, I find that the Union is basing its petition largely on the move of the petitioned-for employees from Westchester to Chicago Heights rather than a dispute over work. In contrast, in the prior case, 13-UC-340, the Union's argument was based, at least in part, on the Work Preservation language of the collective-bargaining agreement involved in that case.

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